Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

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In the Matter of)	
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Open Internet Remand)	GN Docket No. 14-28
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52
)	

COMMENTS OF THE INTERNET ASSOCIATION

The Internet Association¹ files these comments in support of the Commission to continue its efforts to preserve an open Internet.² The policy underpinnings of the *Open Internet Order* remain vitally important to strengthening and protecting Internet freedom, fostering innovation and economic growth, and empowering users.³ Notwithstanding the D.C. Circuit's remand of the *Open Internet Order*,⁴ the Commission has all the authority it needs to adopt enforceable rules to preserve the open nature of the Internet that is essential to the "virtuous cycle" of innovation at the edge of the network, continued improvements and advancements in broadband infrastructure, and increased broadband adoption.

¹ The Internet Association represents the world's leading Internet companies including: Airbnb, Amazon, AOL, eBay, Expedia, Facebook, Gilt, Google, IAC, LinkedIn, Lyft, Monster Worldwide, Netflix, Practice Fusion, Rackspace, reddit, Salesforce.com, SurveyMonkey, TripAdvisor, Twitter, Uber Technologies, Inc., Yelp, Yahoo!, and Zynga.

² See Public Notice, Federal Communications Commission, New Docket Established to Address Open Internet Remand, GN Docket No. 14-28, DA 14-211 (rel. Feb. 19, 2014).

³ See Preserving the Open Internet, Report and Order, 25 FCC Rcd. 17905 (2010) ("Open Internet Order").

⁴ Verizon v. FCC, 740 F.3d 623 (D.C. Cir. 2014).

I. OPEN INTERNET SAFEGUARDS REMAIN VITALLY IMPORTANT

An open Internet is vital to innovation, economic growth, and free expression on the Internet. The Internet's "innovation without permission" ecosystem flows from a decentralized, open architecture, and creates an environment for Internet users to access content without barriers. An open Internet also is essential to continued improvements and advancements to our broadband infrastructure.

The D.C. Circuit endorsed the Commission's identification of a virtuous cycle of innovation in which "new uses of the network—including new content, applications, services, and devices—lead to increased end-user demand for broadband, which drives network improvements, which in turn lead to further innovative network uses." 5

The continued success of the Internet as a platform for innovation, speech, and commerce should not be taken for granted. The D.C. Circuit agreed with the Commission's conclusion that the gatekeeper terminating access position of broadband Internet access service ("BIAS") providers means that they have both the "technological ability to distinguish between and discriminate against certain types of Internet traffic" and a monopoly "economic power" that incents them to "restrict edge-provider traffic" and discriminate against unaffiliated traffic. Accordingly, the Commission should adopt enforceable rules to preserve the fundamental characteristics of an open Internet.

1a. at 001 11.4.

⁵ *Id.* at 661 n.4.

⁶ *Id.* at 646 (citing *Open Internet Order*, 25 FCC Rcd. at 17923 ¶ 31).

II. THE INTERNET ASSOCIATION SUPPORTS ENFORCEABLE RULES TO PROTECT AN OPEN INTERNET

The Internet Association encourages the Commission to pursue a sound, targeted strategy to ensure an open Internet. Among Section 706 and Titles II, III, and VI of the Communications Act, the Commission has the authority it needs to protect an open Internet. Using its authority, the Commission should ensure that it has in place enforceable rules ensuring transparency, prohibiting blocking, and mandating non-discrimination.

Transparency. The Internet Association supports a transparency rule that requires Internet access providers to provide information regarding their network management practices, performance, and the commercial terms of their broadband services. Users should know if BIAS providers are blocking and degrading content and any reasons for doing so. Users should also have meaningful information about the performance of their broadband service: peak-time end-to-end performance, rather than just aggregate speed from the home to the headend. Consumers are entitled to know whether their broadband connections can actually support the desirable content and applications that motivated them to become broadband service subscribers in the first place, or to upgrade their broadband service. Further, edge providers should have the technical information they need to create and maintain their products and services as well as to assess the risks and benefits of embarking on new projects.

No blocking. The Internet Association supports an enforceable rule that precludes Internet access providers from blocking or degrading access to content. Users should be able to reach any sites that they want and retrieve the information and content they request. And edge providers should not be unfairly blocked, explicitly or implicitly, from reaching consumers. The fundamental architecture of the Internet depends on this basic rule.

Non-discrimination. Chairman Wheeler has proposed setting "an enforceable legal standard that provides guidance and predictability to edge providers, consumers, and broadband providers alike to use with a case-by-case approach to address instances of discrimination." A case-by-case approach works best if there are clear rules establishing the forms of discrimination that are not permissible on the Internet. Indeed, clear rules are a legal prerequisite for case-by-case enforcement.

The transparency, non-blocking, and non-discrimination rules should apply to both the wired and wireless environments. Wireless broadband is no longer the fledgling platform that it was at the start of the FCC's Open Internet proceeding and new companies that are excluded from mobile broadband will not be able to compete fairly or effectively.

III. INTERCONNECTION

Today broadband Internet access service providers may exert influence as gatekeepers between edge providers and their customers. This is a consequence of the broadband Internet access service providers' "last mile" position in the way Internet access is delivered. The Internet Association believes that the entire industry (ISPs, CDNs, application providers, etc.) should aspire to "settlement-free" peering because that outcome ultimately benefits all stakeholders in the Internet ecosystem.

IV. CONCLUSION

The Internet Association is encouraged by Chairman Wheeler's decision to make preserving an open Internet a core priority for the Commission. The Internet Association hopes that the opening of this docket will help maintain focus on that priority. Adherence to basic

⁷ FCC Chairman Tom Wheeler, Statement on the FCC's Open Internet Rules (Feb. 19, 2014).

principles of openness will ensure that innovation and competition continue to thrive on the Internet.

Respectfully submitted,

/s/

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